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10/601,448	06/23/2003	Gregory A. Holbrook	FIRZ 2 00143	9762

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EXAMINER	
KRAMER, DEVON C	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/601,448
Filing Date: June 23, 2003
Appellant(s): HOLBROOK ET AL.

Matthew Dugan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/8/06 appealing from the Office action mailed 3/9/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,298,292	Shono et al	Oct 2001
5,430,647	Raad et al	Jul 1995
5,346,242	Karnopp	Sep 1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 24-27 and 29-46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Shono et al (6298292) in view of Raad et al (5430647).

Claim 28 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Shono et al (6298292) in view of Raad et al (5430647) and further in view of Karnopp (5346242).

(10) Response to Argument

As an initial note, please note that the final rejection of 3/9/06 states that it would have been obvious to one of ordinary skill in the art at the time of the invention to have controlled the leveling device of Shono to allow leveling of the vehicle after the vehicle reaches a second pre-determined acceleration value which is less than the first pre-determined acceleration value to prevent prematurely leveling of a vehicle during times when a vehicle is experiencing extreme changes in acceleration, and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. This obvious statement is not necessary because this limitation is clearly taught by Shono et al. The abstract of Shono states, "If the forward-backward acceleration is equal to or less than a first predetermined value, a vehicle height deviating from a target vehicle height is adjusted by a normal operation. If the forward-backward acceleration is greater than the first predetermined value but not greater than a second predetermined value, the determination for starting vehicle height adjustment

is prevented. If the forward-backward acceleration is greater than the second predetermined value, the vehicle height adjustment is suspended." Please note that first predetermined value of Shono is equivalent to the second predetermined acceleration value of the instant application and the second predetermined value of Shono et al corresponds to the first predetermined acceleration threshold of the instant application.

Throughout appellant's brief, arguments are presented which are not reflected in the claim language. First, appellant argues that Shono teaches a system which is much more complex than that of the instant application. Please take note, that even though the system of Shono may be more complex than the instant application, the method steps in the claim language presented in the instant application are still met by the disclosure of Shono et al. Essentially the method of the instant application and Shono is the same, the difference being that Shono performs the method using multiple loops of the control program shown in figure 2 and the instant application performs the control in one loop. Please note that applicant does not define what is considered "a leveling action". For the purposes of examination, a leveling action can be whenever a car is moving.

Appellant then argues that Shono does not teach or suggest the use of a second, lower acceleration threshold value for determining conditions suitable for continuing an earlier discontinued leveling action. Shono et al teaches a loop which controls the height of the vehicle. Appellant does not states that "a leveling action" occurs in a single loop in the instant application's claims. As stated earlier, the first predetermined acceleration

value of Shono et al corresponds to the second, lower acceleration threshold value for determining conditions suitable for a leveling action.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art recognizes that control systems (suspension leveling control) are designed to prevent hunting of the system or to prevent the system from running excessively due to actively changing conditions. The examiner is merely using the

hydraulic leveling control used by Shono and replacing the hydraulic system with a pneumatic system.

In section 3D on page 11 of the brief, appellant argues the examiners rejection of claims 31 and 32. Claim 31 recites, "waiting until the acceleration has been below the second predetermined acceleration threshold value for a predetermined period of time." Please note that in claim 31, applicant vaguely states "a predetermined period of time". This period of time can be the time it takes the controller, once the acceleration drops below the second predetermined acceleration value (the first predetermined value in Shono), for the signals to be filtered (col. 6 line 9) and for the controller to start the compressor / pump and open the valves for the leveling of the vehicle. Please note that this step of waiting a predetermined amount of time is inherent to control systems to prevent a premature start of a control operation (leveling action). Claim 32 recites, "said predetermined period of time is one of greater than and substantially equal to about one second". Please note that, "about one second" a broad limitation to give weight. Note that the examiner stated that the value of 1 second would have been obvious to use merely to prevent the system from unnecessarily leveling in the event that the acceleration is only under the predetermined level for a very short period of time. This is a fundamental concept of control systems.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Devon Kramer

9/11/06

Conferees:

Jim McClellan

Robert Siconolfi